

Executive Summary: Belgium

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Executive Summary

Issuing Procedures

- The arrest and surrender of persons between Belgium and another Member States is governed by the 2003 Belgian European Arrest Warrant Act, in conjunction with the Belgian Law of 20 July 1990 on pre-trial detention and the Belgian Code of Criminal Procedure.
- The competence to issue EAW generally relies on the investigating judge. Only exceptionally the public prosecutor, who is not a judicial authority, might be competent to issue EAW, that is: i) when the EAW targets minors (individuals under 18); ii) for the execution of custodial sentences or security measures already decided by a judge and iii) for EAWs based on arrest warrants issued by courts in the trial phase.
- In the ZB case (2019), the Court of Justice of the European Union (CJEU), assessed the competence of Belgian public prosecutors to issue EAW for the execution of custodial sentences. The CJEU concluded that the public prosecutor was competent to issue EAW pursuing the execution of a custodial sentence. When addressing the issue of proportionality, the CJEU considered that the existence of a previous enforceable judgment imposing a custodial sentence, justified a presumption of compliance with the procedural rights of the targeted person.
- The recent cases of McPhillips and Hatherley (2020) and Killoran (2021), have dealt with the issue of Belgian EAWs for prosecution purposes and case readiness. Acknowledging the particularities of the Belgian criminal procedure, it has been observed that the “further information” requested to the Belgian issuing authority is determinant in the assessment of the execution authority. In particular, the insights given by the issuing authority on its intention to charge and try, are critical. As a result, Belgian EAWs issued for prosecution purposes must be assessed on a case by case basis.

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Executing Procedures

- In the N.J.E case (2013) the Belgian courts rejected the execution of EAW in light of the risk of torture and inhuman treatment or punishment. The Court argued that it did not have to observe with certainty how the risks to the rights of the suspect could materialize to justify the refusal of EAW. The case also posed questions on the quantity, quality and the sources of the evidence used by the issuing authority to decide not to execute EAW.
- In the Puig case (2021), Belgian executing authorities checked the competence of the issuing authority in light of the right to fair trial. The rejection of the EAW answered to the defence's claim on the incompetence of issuing's authority and the risk over Mr. Puig's right to a hearing by a competent and impartial tribunal. The explanations provided by the issuing authority did not convince the executing authority. The Belgian courts also acknowledged that, in the specific prosecution of Catalan politicians, statements made by high rank officials upon the culpability of the persons concerned, affected the presumption of innocence of Mr. Puig and constituted an undue interference which undermined the independence and impartiality of the Spanish Supreme Court.
- The Valtonyc case (2018-ongoing), exposes the procedural obligation to double check the information contained in the EAWs forms. The executing authority must have a minimum diligence to ascertain whether the information provided by the issuing authority is accurate. In another level, the case also shows the relationship between dual criminality and the prevalence of the executing state's constitutional order when fundamental rights are at stake.

Key interpretation and implementation challenges

- Subject to a case-by-case examination, the ground for refusal included in Article 4(5) of the Belgian EAW Law qualifies the principle of mutual recognition and the meaning of mutual trust. Belgium's EAW cooperation is grounded on a critical trust, one that welcomes the dialogue with the issuing Member State but that also recognises the defendant's capacity to exercise an opposition to the surrender.
- Belgian executing authorities do not elude the political and historical circumstances surrounding the cases under assessment. While triggered by the defense action, the arguments developed by Belgian courts, are receptive to the contextual singularities of each case.
- The principles of mutual recognition and mutual trust do not render the execution EAWs into an automatic and acritical procedure. The executing authority is entrusted with a minimum procedural diligence to check the accurateness of the information provided by the issuing authority. Even with regards to the more basic aspects, minimum checks and verifications appear as a duty of care to the executing authority.
- When convinced on the existence of a risk over the rights of the requested persons, the executing authority considers its assessment not only possible but necessary in light of EU and Belgian constitutional law.